CHAN NG

v.

MENTERI HAL EHWAL DALAM NEGERI MALAYSIA & 2 ORS.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD. GHAZALI BIN MOHD. YUSOFF JC
[CRIMINAL APPLICATION NO. 44-18 OF 1994]
9 JANUARY 1995

ADMINISTRATIVE LAW: *Application for writ of habeas corpus - Whether applicant informed of grounds of arrest - Whether applicant informed of right to make representations - Whether Minister includes Deputy Minister - Whether omission of the word "Timbalan" in statement by Deputy Minister of a technical defect - Whether detention order invalidated - Whether exhibit MJMA2 inconsistent with detention order, exhibit MJMA - Whether there are separate limbs to s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985.*

The applicant was arrested on 21 November 1992 in Bentong Pahang and subsequently on 18 January 1992 was detained pursuant to an order under s. 6(1) of the Dangerous Drugs (special Presentive Measures) Act 1985 (The Act) for a period of two years. On 17 January 1994 the duration of the order was extended for another two years. Both orders were served on him. The applicant challenged the detention on the following grounds:

i. the first order is not valid as he was not informed of the reason as to why he was arrested.

ii. that the respondents have failed to comply with s. 10 of the Act, namely, the Advisory Board did not meet to consider his representations.

iii. that exhibit "MJMA-2" a statement in writing furnished by the Deputy Minister to the applicant informing him of the grounds, allegation of facts and other particulars as to his detention gives the impression that it was issued by the Minister for Home Affairs, and

iv. that exhibit "MJMA-2" is inconsistent with the detention order, exhibit "MJMA-1".

Held:

[1] Sergeant Teo's affidavit sufficiently confirms that he had acted as interpreter for ASP Amarjit when the latter informed the applicant of the grounds of his arrest. In his affidavit ASP Amarjit stated that he informed the appllicant of the grounds of his arrest in simple Bahasa Malaysia which is easily understandable. The police report shows that the applicant is a Malaysian national and lorry driver by occupation. It is difficult to believe that he cannot understand simple Bahasa Malaysia.

[2] The respondents have filed an affidavit of one Chief Inspector Lum Siew Chee, who stated that on 18 January 1992, on receipt of the detention order issued under s. 6(1) of the Act, he served it on the applicant who acknowledged receipt of it. He also stated that he informed the applicant of his rights to make representations to the Board and that he had simultaneously handed three copies of the forms which would enable the applicant to make representations to the Board. He further stated that he explained to the applicant of his right

to make representation in Cantonese at the latter's request. Inspector Lum also stated that the applicant had acknowledged receipt of the detention order and had stated on a copy of the order that he understood the contents of the order.

[3] In this application, it is not disputed that the Deputy Minister for Home Affairs is assisting the Minister for Home Affairs in the discharge of the latter's duties and functions, and, as Deputy Minister, he has all the powers of the Minister. As such the omission of the word "Timbalan" in exhibit "MJMA-2" cannot amount to a technical defect on which the applicant can rely on to invalidate the detention order (exhibit "MJMA-1"). Both are independent documents and s. 9(2) of the Act only requires that at the time of the service on the applicant of the detention order, the applicant shall be furnished with such statement informing him of the grounds on which the order is made.

[4] The argument that the said exhibits are inconsistent cannot hold water. In the instant case the Act concerned provides for the preventive detention of the persons associated with activities relating to or invoking the trafficking in dangerous drugs. From the Court's reading of the said s. 6(1) of the Act, there is only one limb, namely any activity relating to or involving the trafficking in dangerous drugs.

[5] The only difference found in s. 6(1) relates to the words "has been" or "is associated" and that difference is only a grammatical difference and nothing more. That section is worded to cover the past and present tense of participation in any activity relating to or involving the trafficking in dangerous drugs. The person who can be detained must either be a person who:

a. has been associated with any activity relating to or involving the trafficking in dangerous drugs; or

b. is associated with any activity relating to or involving the trafficking in dangerous drugs.

There are no separate limbs, the only difference is purely grammatical. Similarly there is no difference with regard to the words "relating to or involving the trafficking in dangerous drugs" found in that section; these words do not at all denote that there is more than one limb as argued by Counsel. These words merely encompass persons who aid and abet those who traffic in dangerous drugs, there is only one limb in the s. 6(1) of the Act and that is "any activity relating to or involving the trafficking in dangerous drugs".

[Application dismissed].

Cases referred to:
Public Prosecutor v. Kang Ho Soh [1991] 3 CLJ 2914 ***(cit)***
Pendakwa Raya v. Ismail bin Atan [1992] 2 CLJ 1253 ***(cit)***
Tan Yap Seng v. Ketua Polis Negara & 2 Ors. [1991] 2 CLJ 1400 ***(dist)***
Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam [1993] 2 AMR 49, 3471 ***(dist)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129 ***(foll)***
Che Su binti Shafie v. Superintendent of Prisons, Pulau Jerejak, Penang [1974] 2 MLJ 194 ***(refd)***

Legislation referred to:
Criminal Procedure Code (Cap. 6), Chapter XXXVI
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 2, 3(2)(c), 6(1), 9(2)(b), 10
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, r. 6(2)
Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 4(1)
Federal Constitution, Art. 5(2), 5(3) & 43A(2)
Internal Security Act 1960 s. 11(2)

For the applicants - Mary Jesmal Pereira; M/s. Teh Poh Teik & Co.
For the respondents - Kamaludin bin Md. Said, FC

JUDGMENT

Mohd. Ghazali bin Mohd. Yusoff JC:

This is an application made under Chapter XXXVI of the Criminal Procedure Code (Cap. 6) and Art. 5(2) of the Federal Constitution for an order that a writ of *habeas corpus* be issued to direct the respondents to produce the applicant before this Court and to show cause as to why the applicant should not be set at liberty forthwith on the grounds shown in the affidavit filed in support thereof.

The applicant was arrested on 21 November 1991 in Bentong, Pahang and subsequently on 18 January 1992 was detained pursuant to an order made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter referred to as "the Act") for a period of two years. On 17 January 1994 the duration of the order was extended for another two years. It is not disputed that both orders were served on him.

The applicant has raised a number of grounds challenging the detention. His first ground of complaint is that the first order is not valid as he was not informed of the reason as to why he was arrested. In reply to this allegation, the respondents have filed an affidavit (encl. 11) of one Amarjit Singh, an Assistant Superintendent of Police (who at the relevant time was an Inspector of Police), who stated that after arresting the applicant in Bentong on 21 November 1991, he explained to him in simple Bahasa Malaysia the reasons why he was arrested which was then translated into Cantonese by one Sergeant Teo Ching Hwa who has sworn an affidavit (encl. 7) to that effect.

Counsel for the applicant argued that there is no concrete evidence to show that the applicant was informed of the grounds of his arrest notwithstanding both the said affidavits. She contended that the police report lodged by the said ASP Amarjit (Exhibit "ASCS1") with regard to the arrest did not make any mention at all of Sergeant Teo's role as interpreter. She contended that since the applicant has stated in his application that he cannot understand Bahasa Malaysia, his stand is that he was not informed of the grounds of his arrest, which is contrary to Art. 5(3) of the Federal Constitution, which reads:

> Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

I cannot see any merit in this argument. The police report lodged by ASP Amarjit is merely an 'arrest' report. In a criminal trial such report would not even qualify as a first information report. It was lodged arising from the fact that an arrest has been made. It need not be so informative or so detailed to the extent that ASP Amarjit would be required to mention in the 'arrest' report that Sergeant Teoh translated into Cantonese what he informed the applicant. Such report, which is lodged by the police after effecting an arrest, is not even admissible in criminal proceedings unless it can be established by the prosecution that it is a first information report. The context of the report lodged by ASP Amarjit clearly denote that he had conducted an investigation prior to the arrest of the applicant. In *Public Prosecutor v. Kang Ho Soh* [1991] 3 CLJ 2914, the learned Judge held that the prosecution cannot use an 'arrest' report to corroborate its own witnesses and in *Pendakwa Raya v. Ismail bin Atan* [1992] 2 CLJ 1253 the Court held that police reports made after investigation is inadmissible.

In this application I find that Sergeant Teo's affidavit sufficiently confirm that he had acted as interpreter for ASP Amarjit when the latter informed the applicant of the grounds of his arrest. In his affidavit ASP Amarjit stated that he informed the appellant of the grounds of his arrest in simple Bahasa Malaysia which is easily understandable. The police report shows that the applicant is a Malaysian national and lorry driver by occupation. I find it difficult to believe that he cannot understand simple Bahasa Malaysia.

Counsel had referred to the case of *Tan Yap Seng v. Ketua Polis Negara & 2 Ors.* [1991] 2 CLJ 1400 where at p. 1401, the learned Judge said:

> Turning to the issue which arises for decision there can be no doubt that the onus is upon the executive to demonstrate that the subject's detention has been procured by steps "all of which were entirely regular" or to put it another way, to show that "every step in the process which led to such detention was followed with the extreme regularity.

I cannot see the relevance of the authority cited. The bone of contention there is different. In that case, the Court held that in the absence of any evidence as to the actual date on which the designated officer submitted his report to the Minister as required under s. 3(2)(c) of the Act, the Court is not at liberty to presume that he had done so within the time limited. In that case the Court held that that omission was a technical defect whereas in the instant application, the document which is the subject-matter of the complaint is merely an 'arrest' report. It was lodged merely to confirm that an arrest had been made under the Act and at the time it was lodged, ASP Amarjit was under no legal obligation to state in his report that Sergeant Teo had acted as interpreter. As stated by the learned Judicial Commissioner in *Pendakwa Raya v. Ismail bin Atan* [1992] 2 CLJ 1253, at p. 1256:

> The rational is rather simple; if statements are recorded after investigation, be it in the form of a police report or otherwise, it can be made to fit into the case as has then developed. This would not be fair to the accused person since by that time the police could say what they wish to suit the circumstances of the case.

All that is required of ASP Amarjit is to inform the applicant of the grounds of his arrest, and the duty of Sergeant Teo as interpreter, is to make sure that he and the applicant understood one another; Sergeant Teo has stated that he spoke to the applicant in Cantonese on the latter's request and that being so, the above ground of complaint should fail.

The second ground of complaint of the applicant is that the respondents have failed to comply with s. 10 of the Act, namely, the Advisory Board (hereinafter referred to as "the Board") did not meet to consider his representations. The question arising is, did the applicant make representations to the Board? Counsel argued that there is no evidence in the affidavit of the secretary to the Board (encl. 18) to show that the applicant did not make representations to the Board. She stressed that every fact deposed to in an affidavit must be proved.

I would have agreed with Counsel if the secretary to the Board did not make any reference at all in his affidavit to a letter written by the applicant wherein the applicant stated that he did not wish to make representations to the Board, but this was not the case. In para. 4 of his affidavit, the secretary to the Board refers to Exhibit "KA1" which he states is a letter from the applicant dated 22 January 1992 informing the secretary that he did not wish to make representation to the Board. In para. 5 of the same affidavit, the secretary to the Board refers to Exhibit "KA2" which is a copy of a notice, dated 7 August 1993, required under r. 6(2) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules, 1987 to be given to the applicant and the officer in charge stating the time and place the Board will sit and review the detention order.

However at the hearing of this application, I discovered that Exhibit "KA2" referred to in the affidavit of the secretary was wrongly marked as "KA1" and that the exhibit that is supposed to be marked as "KA1", that is, the applicant's letter addressed to the secretary to the Board informing him that he did not wish to make representations to the Board, was not attached. On being informed of this mistake, the Federal Counsel who represented the respondents undertook to submit a copy of that exhibit to the Court. He agreed with me that Exhibit "KA2" has been wrongly marked as "KA1".

I had reserved my decision at the end of this application and upon receipt of the missing exhibit, I find that there is no basis for Counsel's contention that the respondents did not comply with s. 10 of the Act. The respondents have filed an affidavit of one Chief Inspector Lum Siew Chee (encl. 14), who stated that on 18 January 1992, on receipt of the detention order (Exhibit "LSC1") issued under s. 6(1) of the Act, he served it on the applicant who acknowledged receipt of it. He also stated that he informed the applicant of his rights to make representations to the Board and that he had simultaneously handed three copies of the forms which would enable the applicant to make representations to the Board. He further stated that he explained to the applicant of his right to make representations in Cantonese at the latter's request.

That being so, it is my finding that the affidavit of Inspector Lum and Exhibit 'LSC1' contained therein clearly shows the following:

(i) that a copy of the detention order was served on the applicant;

(ii) that the applicant was informed of his right to make representations to the Board; and

(iii) that the applicant was furnished with a statement in writing of the grounds on which the order is made and of the allegation of fact on which the order is based and that the applicant was also supplied with the necessary particulars which he may require in order to make representations to the Board.

Inspector Lum also stated that the applicant had acknowledged receipt of the detention order and had stated on a copy of the order that he understood the contents of the order. As mentioned earlier, the secretary to the Board has stated in his affidavit that he received a letter from the applicant dated 22 January 1992 wherein the latter informed him that he did not wish to make representations.

Based on the above, I cannot see how Counsel's argument that the respondents have not shown any evidence that the applicant did not wish to make representation can stand at all. To me, the omission to attach that letter to the secretary's affidavit was a mere oversight and did not at all prejudice the applicant in his application for *habeas corpus*. I find that the accidental omission to attach the said exhibit does not even amount to a technical defect which the applicant can rely on to invalidate the order. After all that letter has been referred to by the secretary to the Board in his affidavit. It was a mere oversight and as such I cannot see any merit in the contention by the applicant's Counsel that there is no evidence to show that the applicant had refused to make representations to the Board.

Another ground of complaint of the applicant is with regard to Exhibit "MJMA2" which is attached to the affidavit of the Deputy Minister of Home Affairs (encl. 9). That exhibit is the statement in writing furnished by the Deputy Minister to the applicant informing him of the grounds, allegation of facts and other particulars as to his detention. Section 9(2)(b) of the Act provides that such statement is to be furnished at the time of service of the detention order on the applicant.

With regard to the above matter, Counsel argued that Exhibit "MJMA2" is defective, namely, it gives the impression that it was issued by the Minister for Home Affairs as it is endorsed with the words "Dengan Arahan Menteri Dalam Negeri" whereas, as stated in para. 7 of the Deputy Minister's affidavit, it was the Deputy Minister himself and not the Minister who had ordered that the statement in writing be issued to the applicant together with the detention order (Exhibit "MJMA1"). She argued that Exhibit "MJMA2" should be endorsed with the words "Dengan Arahan Timbalan Menteri Dalam Negeri" and that this defect is fatal and it reflects that the Deputy Minister did not apply his mind to the matter and had acted as a mere "rubber stamp".

I am quite surprised that Counsel raised this issue. Section 2 of the Act provides that the word "Minister" means the Minister charged with the responsibility for internal security and Art. 43A(2) of the Federal Constitution provides as follows:

> Deputy Ministers shall assist Ministers in the discharge of their duties and functions, and for such purpose shall have all the powers of Ministers.

In this application, it is not disputed that the Deputy Minister for Home Affairs is assisting the Minister for Home Affairs in the discharge of the latter's duties and functions, and, as Deputy Minister, he has all the powers of the Minister. As such I cannot see how the omission of the word "Timbalan" in Exhibit "MJMA2" can amount to a technical defect on which the applicant can rely on to invalidate the detention order (Exhibit "MJMA1"). Both are independent documents and s. 9(2) of the Act only requires that at the time of the service on the applicant of the detention order, the applicant shall be furnished with such statement informing him of the grounds on which the order is made.

Section 6(1) of the Act provides that where the Minister is satisfied that a person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, he may make an order directing that such person be detained for a period not exceeding two years. The Act provides that the Minister is empowered to make such order and, as can be seen from Exhibit "MJMA1" which is a copy of the order, it is only appropriate that he affix his signature to that document. With regard to Exhibit MJMA2", s. 9(2)(b) of the Act only requires the Minister to furnish such a document to the applicant at the time of service of the detention order. Exhibit "MJMA2" is not the detention order; it is only a supplementary statement to be furnished by the Minister to the applicant.

In para. 7 of the Deputy Minister's affidavit he stated that he instructed one of his officers to prepare that statement. The said s. 9(2)(b) of the Act only requires him to furnish the statement to that person and there is no requirement that he must sign it. As Deputy Minister, he has all the powers of the Minister as provided for by Art. 43A(2) of the Federal Constitution. That being so, I cannot see how the exclusion of the word "Timbalan" from Exhibit "MJMA2" can be fatal. There is no evidence to show that the applicant was misled by this omission of the word "Timbalan" and neither would it make any difference to the applicant as to whether it was the Minister or Deputy Minister who had furnished the statement to him. I would think that the applicant's concern would be more towards the contents of the statement rather than whether it was the Minister or Deputy Minister who had furnished the statement to him.

The Deputy Minister has stated in para. 6 of his affidavit that he was satisfied that the applicant has been associated with activities relating to or involving the trafficking in dangerous drugs and that it is necessary in the interest of public order that the latter be detained. He stated that he made the order after considering the investigation report of the

police and the report of the Inquiry Officer as provided for under the Act. Upon such circumstances, I cannot find any basis for the applicant to argue that the Minister did not apply his mind or that he had merely acted as a "rubber stamp" or had made a "mechanical decision" when he issued the order just because the statement in writing to be furnished by him to the applicant was prepared by one of his officers notwithstanding that it was carried out upon his instructions. This ground of complaint cannot stand at all.

Counsel also attacked Exhibit "MJMA2" on the ground that it is inconsistent with the detention order, that is Exhibit "MJMA1". She said s. 6(1) of the Act contains three limbs and that these three limbs appear in Exhibit "MJMA1" but not in "MJMA2". She argued that this inconsistency confirms her contention that the Deputy Minister had merely acted as a "rubber stamp" when he made the detention order as he did not address his mind to the relevant limb found in s. 6(1) of the Act when he made the order. To support her contention, Counsel referred to the case of *Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam* [1993] 2 AMR 49, 3471 where the Supreme Court in dealing with an appeal from the High Court for *habeas corpus* relating to a detention order issued under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 said (at p. 3476):

> We would conclude by saying that in determining the propriety or legality of a detention order made under s. 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both limbs in making his detention order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detenu.

Section 4(1) of the said 1969 Ordinance referred to in the above-mentioned case is worded as follows:

> If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a "detention order") directing that that person be detained for any period not exceeding two years.

In that case the Supreme Court agreed with the decision of the learned Judicial Commissioner who had allowed the application for *habeas corpus* on the ground that the order made by the Deputy Minister was vague as to whether he had actually applied his mind to the particular circumstances of the case or whether he had exercised that power of detention mechanically. The Judicial Commissioner had stated that there are two limbs to s. 4(1) of the said 1969 Ordinance, namely:

(a) the Minister can order a person to be detained if he has acted in a manner prejudicial to public order, which encompass various offences all of which do not necessarily involve violence; and

(b) the Minister can order a person to be detained if it is necessary for the suppression of violence or the prevention of crimes involving violence.

The Judicial Commissioner had stated that grounds (a) and (b) above are distinct and different whereas the order of the Deputy Minister referred to both grounds which according to him was defective.

Counsel submitted that her application should be allowed based upon the judgment in that case discussed above. She argued that in the instant application, there are three limbs in s. 6(1) of the Act and that the detention order issued by the Deputy Minister (Exhibit "MJMA1") also contained the three limbs whereas the statement in writing furnished by the Deputy Minister (Exhibit "MJMA2") contains only two limbs. The text in both exhibits which Counsel is referring to are as follows:

Exhibit "MJMA1":

> Bahawasanya, selepas menimbangkan laporan lengkap penyiasatan dan laporan Pegawai Siasatan yang dikemukakan, saya adalah berpuashati bahawa orang yang tersebut di bawah ini pernah ada/sedang ada kaitan dengan aktiviti yang berhubungan dengan/yang melibatkan pengedaran dadah berbahaya;

Exhibit "MJMA2":

> Bahawa kamu pernah ada kaitan dengan apa-apa aktiviti yang berhubung dengan atau yang melibatkan pengedaran dadah berhaya.

She submitted that since both the said exhibits were inconsistent and that one depended on the other, this denotes that the Deputy Minister had exercised his power of detention mechanically and following the decision in *Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam*, referred to above, her application for *habeas corpus* should be allowed.

With respect I cannot see how the above argument can hold water. That authority referred to above relates to an Ordinance which deals with preventive detention of persons acting in a manner which is prejudicial to public order or to suppress violence or to prevent crimes involving violence whereas in the instant case the Act concerned is an Act to provide for the preventive detention of persons associated with activities relating to or involving the trafficking in dangerous drugs. From my reading of the said s. 6(1) of the Act, there is only one limb, namely any activity relating to or involving the trafficking in dangerous drugs. There is no other limb. Section 6(1) of the Act reads:

> Whenever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection (3) of s. 3; and
>
> (b) the report of the inquiry officer submitted under subsection (4) of s. 5,
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years.

To me, the only difference found in that section relate to the words "has been" or "is associated" and that difference is only a grammatical difference and nothing more. That section is worded to cover the past and present tense of participation in any activity relating to or involving the trafficking in dangerous drugs. From my reading of the section, the person who can be detained must either be a person who:

(a) **has been associated** with any activity relating to or involving the trafficking in dangerous drugs; or

(b) **is associated** with any activity relating to or involving the trafficking in dangerous drugs.

There are no separate limbs and as stated earlier, the only difference is purely grammatical. Similarly I cannot find any difference with regard to the words "relating to or involving the trafficking in dangerous drugs" found in that section; these words do not at all denote that there is more than one limb as argued by Counsel. From my reading, I find that these words merely encompass persons who aid and abet those who traffic in dangerous drugs, for example, the person who illegally package the dangerous drugs into marketable amounts for sale to users or even a person who assist in the debt collection relating to sales of dangerous drugs just as in any other normal business enterprise. To me the context of those words would cover such persons.

It is my finding that there is only one limb in the said s. 6(1) of the Act and that is "any activity relating to or involving the trafficking in dangerous drugs". That being so I cannot see the relevance of that authority (*Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam*) cited by Counsel for the applicant.

In *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129, a case dealing with s. 11(2) of the Internal Security Act 1960 which is in *pari materia* with s. 9(2) of the Act and in which the detainee also refused to make representations, Suffian FJ said (at p. 151):

> In my judgment, if a detainee honestly feels handicapped by the vagueness, insufficiency or irrelevancy of the allegations of fact on which the detention order is based, he has clearly recourse under s. 11(2)(b)(iii) of the Act to additional particulars.
>
> If I am wrong and if the law is that the vagueness, insufficiency of the allegations of fact supplied to the appellant render his detention illegal, then in my view the test to be applied is that laid down by Kania CJ in *Atma Ram* in the passage already cited on which the learned Solicitor-General relies. I agree with Ibrahim J that the allegations were capable of being intelligently understood and were sufficiently definite to furnish materials to enable him to make a representation against the order of detention and that therefore they were not vague.

In the instant application, the applicant was given the opportunity to make representations but he chose not to do so. The ball was at his feet, so to speak, and there was nothing to prevent him from kicking it. That being so, he cannot turn around and complain about the contents of Exhibit "MJMA2" since, as stated by Suffian FJ, he can request for better particulars. Furthermore, I find that Exhibit "MJMA2" is clear and precise, easily intelligible and sufficiently definite for the applicant to make representations to the Board.

In *Che Su binti Shafie v. Superintendent of Prisons, Pulau Jerejak, Penang* [1974] 2 MLJ 194, Chang Min Tat J said that in cases of this nature the subject could always rely on technical defects to invalidate the order which deprive them of their liberties. But in the instant application, I cannot find any mistake so defective as to invalidate the original detention order and consequently, the extended order. I also find that the accidental omission to attach the applicant's letter to the affidavit of the secretary to the Board intimating that the former did not wish to make representations to the Board has not at all prejudiced the applicant. I also find that the contention of Counsel with regard to the "differences" in exhibits "MJMA1" and "MJMA2" are merely differences in form and not in substance and that these documents are independent of each other and that any difference in form in Exhibit "MJMA2" cannot invalidate the detention order.

This application is dismissed.